

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 27, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Cecile Tropila, Transcriptionist
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 547, HB 146, HB 603, HB 424,
HB 559

EXECUTIVE ACTION ON HB 547

Motion: SEN. GRIMES moved HB 547 BE CONCURRED IN.

Substitute Motion: SEN. HALLIGAN made a substitute motion HB 547 BE AMENDED. Amendments were handed out EXHIBIT(jus69a01).

Discussion:

SEN. MIKE HALLIGAN had asked John Connor, Department of Justice, to discuss the causation with the existing bill. He thought there was problems with proof and other issues so he requested the amendments.

John Connor said he looked at the bill and specifically at the context of proof. He preferred the amendments as to the context of the bill for clarification. He stated transferred intent in Montana was only recognized under the Felony Murder Rule.

SEN. DUANE GRIMES felt laws were passed frequently and the prosecutors might not be comfortable with the laws. He said this became an enhancement penalty and the issue opened the door to spousal abuse and domestic violence against pregnant woman.

SEN. HALLIGAN said the purpose for John Connor to visit with this committee was to offer technical clarity.

Vote: Substitute Motion to adopt amendments HB054704.avl carried 5-4 with SEN. GRIMES, CHAIRMAN GROSFIELD, SEN. HOLDEN, and SEN. O'NEIL voting no.

Discussion:

CHAIRMAN LORENTS GROSFIELD talked about homicide and injuries to a pregnant woman. He felt it would be hard to prosecute when issues of assault were brought forward. John Connor commented on the issue and referred to section eight of the bill. He explained intimidation of threat and said these became problems of proof.

CHAIRMAN GROSFIELD said they were dealing with a new bill by adopting these amendments. He asked about aggravated assault or assault with a weapon in these cases. SEN. HALLIGAN answered by stating injuries to a fetus and the emotional distress experienced by a mother during an assault would cause actual injury.

SEN. HALLIGAN asked if the ten-year provision within the amendment was consistent with other enhanced penalties or was it

less for requesting additional years. **John Connor** thought the ten-year provision was generally consistent. He said there is no restriction on the amount of enhancement provided.

Substitute Motion: SEN. O'NEIL made a substitute motion to amend further adding A PERSON OTHER THAN A MOTHER CONDUCTS NEGLIGENT HOMICIDE OF AN UNBORN CHILD OR CAUSES THE DEATH OF AN UNBORN CHILD AND TO NOT EXCEED \$50,000 OR BE IN PRISON NOT TO EXCEED 20 YEARS OR BOTH.

Discussion:

SEN. JERRY O'NEIL explained his reason for adding more to the amendment. He deleted section two of the bill.

CHAIRMAN GROSFIELD asked if all of section five was to be inserted into the bill. **SEN. O'NEIL** answered yes.

SEN. HALLIGAN was concerned about the proof issues. He said there was the issue of beyond a reasonable doubt and transferred intent might be back in the bill in these cases.

John Connor was not sure of the substitute motion. He asked for clarification. **SEN. O'NEIL** explained the deletion and gave examples for the motion.

John Connor felt the motion would be a direct way of trying to prove the offense. He explained how negligent was not a lesser offense.

Vote: Substitute Motion for INSERTION OF 5, SUBSECTION (1) & (3). BE ADOPTED failed 4-5 with SEN. HOLDEN, SEN. O'NEIL, SEN. GRIMES AND CHAIRMAN GROSFIELD voting aye.

SEN. GRIMES proposed another motion to strike the bill and replace with another bill.

{Tape 1; Side B}

Substitute Motion: SEN. GRIMES made a substitute motion TO RECONSIDER ACTION with SEN. HALLIGAN'S MOTION on Amendment HB 054701.av1 to adopt. Proposed amendments were handed out **EXHIBIT** (jus69a02).

Discussion:

SEN. GRIMES explained the proposed amendments and the clarification for the bill. He felt this would solve problems and concerns regarding the life of the fetus.

CHAIRMAN GROSFIELD felt this would work okay for clarification. He referred to sections one through ten and to strike the amendments originally adopted. **SEN. GRIMES** thought this procedure would make sense. **Valencia Lane, Legislative Staff**, said this would not work because the bill existed and they would need to strike one through ten. She mentioned adopting the substitute motion.

SEN. HALLIGAN did not understand getting around the issues with the original bill. **SEN. GRIMES** explained how to deal with those issues. **John Connor** looked at the amendment and was concerned about human being definition. He said there could be some inconsistencies.

Vote: Substitute motion to reconsider action failed 4-5 with **SEN. HOLDEN**, **SEN. O'NEIL**, **SEN. GRIMES** and **CHAIRMAN GROSFIELD** voting aye.

Discussion:

CHAIRMAN GROSFIELD proposed an idea of increasing the term of imprisonment to 100 years.

Substitute Motion: **SEN. GRIMES** made a substitute motion to adopt **INCREASING IMPRISONMENT TO 100 YEARS** on HB 547.

SEN. GRIMES asked if a minimum should be added. **CHAIRMAN GROSFIELD** answered no. He explained assault and assault with a weapon.

Valencia Lane clarified the changes and additions of the imprisonment.

SEN. HALLIGAN wondered if a constitutional problem would arise. He asked if someone could be sent to Montana State Prison on the enhanced penalty greater than the initial penalty. **John Connor** did not think that would create a problem. He mentioned the existing Felony Offender Statute, which offered an additional 100 years.

SEN. O'NEIL suggested also including subsections (A), (B) AND (C) and only ten years for subsections (D), (E), & (F). He explained the 100 years to be a part of deliberate homicide and the other homicide offenses. He said the ten years would continue with the

assault offenses. **Valencia Lane** felt confused by the suggestion and asked if this would deal with a tax on a pregnant woman and what the attempts of the changes would be.

SEN. O'NEIL asked for his suggestion to be disregarded. He amended his suggestion for the bill to include subsections (A), (B), (C), (D), or (F) and include if the fetus was killed due to the act to be 100 years.

Valencia Lane clarified the additions and changes to the substitute motion. She said the motion was counter-effective to the intent of the new bill.

SEN. HALLIGAN said the motion went back into the causation issue. He said it should show the act caused fetal death. **SEN. O'NEIL** gave an example of a pregnant woman being involved in an incident with an offender.

SEN. AL BISHOP said this inserted language to be less than death and asked about the injuries to the fetus. **SEN. O'NEIL** said injury to the fetus was not included in his motion.

SEN. HALLIGAN felt the idea was bringing on aggravated penalties within the enhancement statute.

SEN. O'NEIL agreed if someone hurt the fetus they couldn't be charged for it. However, if the killing of the fetus was obvious, then a severe penalty was needed.

Vote: Substitute Motion to increase the penalty failed 2-7 with **SEN. O'NEIL** and **CHAIRMAN GROSFIELD** voting aye.

Discussion:

SEN. GRIMES felt there was a significant problem with **SEN. HALLIGAN'S** amendment. He thought it was outside of the title of the bill. He did not want to create enhanced penalties, which undermined the whole purpose of this issue. He thought the bill should be voted on as it stood.

CHAIRMAN GROSFIELD clarified the new title had been presented in **SEN. HALLIGAN'S** amendment and was different from the existing bill. He felt they were discussing a Rules Committee issue.

SEN. HALLIGAN commented the amendment protected the pregnant mother, which included the fetus and an act adopting the Fetal Protection Act. He felt the amendment was consistent with the title.

SEN. STEVE DOHERTY said all he heard on testimony of this bill was the protection of the mother. He felt that was not what this bill was about if it was to go to a Rules Committee.

{Tape 2; Side A}

SEN. GRIMES said currently the bill sat in committee with the amendments on it. He had not seen an issue where the amendments were passed and then a question come up regarding if the title of the bill was within the bill or not.

Substitute Motion/Vote: **SEN. HALLIGAN** made a substitute motion that **HB 547 BE TABLED**. Substitute motion carried 5-4 with Grimes, Grosfield, Holden, and O'Neil voting no.

EXECUTIVE ACTION ON HB 146

Valencia Lane, Legislative Staffer, handed out amendments HB014603.av1 **EXHIBIT(jus69a03)** and gave clarification to the changes added. An explanation of the amendments was also handed out **EXHIBIT(jus69a04)**.

SEN. DUANE GRIMES needed clarification. He wondered about turning it over to the pilot projects.

CHAIRMAN LORENTS GROSFIELD asked where SB 386 was currently. **Sandy Otzinger, Executive Director, MT. Juvenile Probation Officers Association**, said SB 386 passed the House Judiciary committee 15-3.

Joe Williams, Department of Corrections, agreed with **SEN. GRIMES** and added the appropriations process would like to make sure juvenile placement funding was set at a level that was within the current budget. He said SB 386 would add approximately \$1.6 million a year to that appropriation.

SEN. GRIMES asked if the budget was being cut to be with the agency's program. He wondered if they needed to adopt HB 146 because there would be no additional expenditures. **Joe Williams** answered yes. He said HB 146 allocated the amount of money out to each judicial district. He said SB 386 was a volunteer program for each judicial district.

SEN. MIKE HALLIGAN asked if the districts were going through their budgets having the counties take the costs. **Joe Williams** said HB 146 stated the money would go back to the counties or department. He explained the decisions being made with placements.

SEN. HALLIGAN asked for clarification of youth placement committees and what the judge's authority would be. **Joe Williams** explained a placement committee recommendation process.

SEN. HALLIGAN asked where SB 386 was. **Sandy Otzinger** said the bill was not yet scheduled. **Mike Ferriter, Administrator, Community Corrections**, said he sat through executive action and explained discussion relevant to the bill.

SEN. HALLIGAN asked what if the judicial districts attempted to try it. **Mike Ferriter** said if both bills died the incentive for local jurisdictions to develop options would not be there.

SEN. HALLIGAN asked if the bigger communities lost, what incentive would be left. **Mike Ferriter** explained the districts overspending their budgets and the development that resulted.

SEN. JERRY O'NEIL asked if one of these directions would allow the youth court to make the placement. **Mike Ferriter** answered basically both bills kept intact the concept of youth placement committees.

SEN. HALLIGAN wanted to discuss this issue further. He thought HB 146 needed money in the budgets.

Motion: **SEN. HALLIGAN** moved that **AMENDMENTS HB014603.AVL TO HB 146 BE ADOPTED.**

Discussion:

SEN. GRIMES wondered if the amendments would conflict with the House.

Vote: Motion to adopt amendments HB014603.avl carried 6-0 with **SEN. STEVE DOHERTY, SEN. WALT McNUTT, AND SEN. RIC HOLDEN** excused.

Motion/Vote: **SEN. GRIMES** moved **HB 146 BE CONCURRED IN AS AMENDED. Motion carried 6-0 with SEN. STEVE DOHERTY, SEN. WALT McNUTT, AND SEN. RIC HOLDEN** excused. **SEN. HALLIGAN** would carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 603

Motion: **SEN. GRIMES** moved that **AMENDMENTS HB060303.AVL TO HB 603 BE ADOPTED.****EXHIBIT(jus69a05)**

Discussion:

SEN. DUANE GRIMES explained the proposed amendments struck section three from the bill. **Chris Tweeten, Attorney General's Office**, supported the changes to the bill. He said this language was a result of negotiation between the attorney general and the governor.

{Tape 2; Side B}

CHAIRMAN LORENTS GROSFIELD said this added something permanently to the statute. He agreed with the proposed amendments.

Vote: Motion to adopt amendments HB060303.avl carried unanimously.

Motion: SEN. GRIMES moved HB 603 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. GRIMES asked if line 27 should have language changed. **Valencia Lane, Legislative Staffer**, said if they were required by law to serve under council they would be required to do so whether this bill stated this language or not.

SEN. GRIMES said this preserved the status quo and it was up to the individual agencies to serve notice. **Valencia Lane** said the language was only in Subsection (2) and it clarified requiring service on the attorney general, which would not be substituted.

Vote: Motion that HB 603 be concurred in as amended carried unanimously. **SEN. GRIMES** would carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 424

Motion: SEN. GRIMES moved that HB 424 BE TABLED.

Information on Allied Citizens for Healthcare Equity was handed out **EXHIBIT(jus69a06)**. Amendments HB042401.avl also were handed out **EXHIBIT(jus69a07)**.

Discussion:

SEN. DUANE GRIMES said this bill did not ensure healthcare costs and he felt this bill would drive costs up.

SEN. JERRY O'NEIL gave an incident of a consumer who couldn't receive benefits from their health insurance.

SEN. WALT MCNUTT agreed to postpone the bill. He had noticed the escalating costs with insurance coverage over the years.

SEN. GRIMES didn't think this bill applied with IRSA. He said some healthcare wasn't being taken care of.

SEN. O'NEIL asked how IRSA would apply to insurance coverage. **Al Smith, MT. Trial Lawyers Association**, explained how this bill affected IRSA programs.

SEN. GRIMES talked about premiums of coverage from certain insurance industries.

Vote: Motion to Table HB 424 carried 5-4 with Doherty, Halligan, O'Neil, and Pease voting no.

EXECUTIVE ACTION ON HB 559

Motion: **SEN. O'NEIL** moved that **AMENDMENTS HB055901.AVL TO HB 559 BE ADOPTED. EXHIBIT(jus69a08).**

Discussion:

Valencia Lane, Legislative Staffer, explained the amendments and clarified the language changes. **SEN. JERRY O'NEIL** said the intent of the amendment was to clarify the language. He thought pieces of the bill were not understandable and this amendment would assist in making it more clear.

SEN. DUANE GRIMES asked what had been changed from the current bill. **SEN. O'NEIL** didn't think there were any substantive changes. **Valencia Lane** said she made a change regarding the none-payment of rent.

SEN. GRIMES said the changes should clarify and he asked if it did. **Valencia Lane** answered yes.

SEN. O'NEIL said he would segregate section 10 or change the days of payment.

{Tape 3; Side A}

Vote: Motion to adopt amendments HB055901.avl carried unanimously.

Motion: **SEN. DOHERTY** moved that **AMENDMENTS HB055902.AVL TO HB 559 BE ADOPTED. EXHIBIT(jus69a09).**

Discussion:

Valencia Lane explained reinserting fifteen days reflected current law. She explained the intent of the amendments to line 25 and 26.

SEN. WALT McNUTT referred to amendment number four and said this would clarify the landlord to accept payment up until the time of judgement. **Valencia Lane** said that would require a change.

SEN. GRIMES asked what the purpose was to strike the manager or owner on the second amendment. **SEN. STEVE DOHERTY** said it was to return it to current law.

SEN. GRIMES thought people would be aggressive with the manager or owner. He did not like the second amendment extending the notice period.

SEN. DOHERTY pointed out the current language could go both ways. He said the landlord might always have a hard time collecting attorney's fees.

Vote: Motion to adopt HB0550902.AVL carried 5-4 with **SEN. HOLDEN**, **SEN. McNUTT**, **SEN. O'NEIL** and **SEN. GRIMES** voting no.

Motion: **SEN. GRIMES** moved HB 559 BE CONCURRED IN AS AMENDED.

Substitute Motion: **SEN. O'NEIL** made a substitute motion on HB 559 AMENDMENT 2 STRIKING MANAGER OR OWNER.

SEN. O'NEIL explained the language to strike. **Valencia Lane** pointed out the subsection being amended. She said this dealt with not only threats to people, but rural violations.

SEN. O'NEIL did not understand the violations. **Valencia Lane** said the rules violations occurred within the motor park area, and she gave an example of the rules.

SEN. O'NEIL withdrew his substitute motion.

Substitute Motion: **SEN. McNUTT** made a substitute motion to REINSTATE THREE TO 15 and amend.

Discussion:

SEN. GRIMES explained the money paid by the landlord. **Ms. Carmichael, Director of the Landlord Association**, said these

changes would rearrange sections. She felt the language would be confusing if the substitute motion passed.

SEN. GRIMES asked to reconsider the three to fifteen days. **SEN. MCNUTT** didn't think it would solve any problems. He clarified the motion made.

CHAIRMAN LORENTS GROSFIELD thought the three days was a short period. **SEN. O'NEIL** explained the payment up to the time of eviction and thought it would be a good idea to use three days. **SEN. DOHERTY** thought three days was too short.

Vote: Substitute motion to reinstate 3 days failed 4-5 with **SEN. HOLDEN**, **SEN. MCNUTT**, **SEN. O'NEIL** and **SEN. GRIMES** voting aye.

Substitute Motion: **SEN. MCNUTT** made a substitute motion changing language and striking language beginning on page three.

SEN. DOHERTY agreed with the changes.

Vote: Substitute motion carried unanimously.

Vote: Motion that **HB 559** be concurred in as amended carried 7-1 with **Doherty** voting no. **SEN. RIC HOLDEN** excused. **SEN. McNUTT** would carry the bill on the Senate Floor.

ADJOURNMENT

Adjournment: 10:45 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AF

EXHIBIT (jus69aad)